

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

EDUARDO E. LANDECHO,

Case No. 1-18-43880-ess

Chapter 13

HON. ELIZABETH S. STONG

Debtor.

-----X

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the annexed application of attorneys for OCWEN LOAN SERVICING, LLC AS SERVICER FOR DEUTSCHE BANK NATIONAL TRUST COMPANY as Trustee for INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR11, MORTGAGE PASS-THROUGH CERTIFICATES Series 2006-AR11 (hereinafter “Movant”), the undersigned respectfully moves this Court for an order, pursuant to 11 U.S.C. §§ 362(d)(1), (d)(2), and 11 U.S.C. §1301, terminating the automatic stay herein as to the lien interest of Movant in real property of the debtor commonly known as 31 Linden Place, Malverne, New York 11565, together with Movant attorney’s fees and costs and such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that this motion shall be returnable on the 7th day of March 7, 2019 at 10:00 a.m. of that day, or as soon thereafter as counsel can be heard, before the Hon. Elizabeth S. Stong at the United States Bankruptcy Court for the Eastern District of New York, Conrad B. Duberstein Courthouse, Courtroom 3585, 271-C Cadman Plaza East, Brooklyn, New York 11201-1800

PURSUANT TO BANKRUPTCY RULE 9014 AND LOCAL BANKRUPTCY RULE 9006-1(b), IF YOU INTEND TO OPPOSE THE MOTION, YOU MUST SERVE ON MOVANT'S COUNSEL AND FILE WITH THE CLERK OF THE BANKRUPTCY COURT, WRITTEN OPPOSITION TO THE MOTION SO AS TO ENSURE ACTUAL RECEIPT NOT LATER THAN SEVEN (7) DAYS BEFORE THE RETURN DATE.

Dated: February 11, 2019
Westbury, NY

RAS BORISKIN, LLC
Attorney for Secured Creditor
900 Merchants Concourse, Suite 310
Westbury, NY 11590
Phone: (516) 280-7675
Fax: (516) 280-7674

By: /s/ Kevin R. Toole
Kevin R. Toole, Esq.
Email: KTOOLE@RASCRAVE.COM

TO:

Debtor

Eduardo E. Landecho
261 4th Avenue
Brooklyn, NY 11210-5000

Debtor's Counsel

Richard S. Feinsilver
One Old Country Road
Suite 125
Carle Place, NY 11514

Trustee

Marianne DeRosa
Standing Chapter 13 Trustee
125 Jericho Tpke
Suite 105
Jericho, NY 11753

U.S. Trustee

U.S. Trustee

Office of the United States Trustee

Eastern District of NY (Brooklyn Office)

U.S. Federal Office Building

201 Varick Street, Suite 1006

New York, NY 10014

Co-Debtor

Joanne D. Raimo

31 Linden Place

Malverne, NY 11565

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

EDUARDO E. LANDECHO,

Case No. 1-18-43880-ess

Chapter 13

HON. ELIZABETH S. STONG

Debtor.

-----X

MOTION FOR RELIEF FROM AUTOMATIC STAY

**TO: THE HONORABLE ELIZABETH S. STONG
UNITED STATES BANKRUPTCY JUDGE**

Secured Creditor, Ocwen Loan Servicing, LLC as servicer for DEUTSCHE BANK NATIONAL TRUST COMPANY as Trustee for INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR11, MORTGAGE PASS-THROUGH CERTIFICATES Series 2006-AR11, by and through the undersigned counsel, hereby moves this Court, pursuant to 11 U.S.C. §§ 362(d)(1), (d)(2), and 11 U.S.C. §1301, for a modification of the automatic stay provisions for cause, and, in support thereof, states the following:

1. Debtor, Eduardo E. Landecho, filed a voluntary petition pursuant to Chapter 13 of the United States Bankruptcy Code on July 2, 2018.
2. On March 3, 2006 Co-Debtor, Joanne D. Raimo, executed and delivered a Promissory Note ("Note"). Co-Debtor and Debtor, Eduardo E. Landecho (a /k/a Edward Landecho) and a Mortgage ("Mortgage") securing payment of the Note in the amount of \$436,000.00 to IndyMac Bank, F.S.B., a federally chartered savings bank. The mortgage was held by Mortgage Electronic Registration Systems, Inc. as nominee for IndyMac Bank, F.S.B., a federally chartered savings bank. The Mortgage was recorded on April 19, 2006 in Book Number 30373 at Page Number 564 of the

Public Records of Nassau County, New York. On November 17, 2008, Co-Debtor entered into a Loan Modification Agreement, thereby increasing the principal balance to \$460,719.69. The Mortgage was assigned to Secured Creditor. True and accurate copies of documents establishing a perfected security interest and ability to enforce the terms of the Note are attached hereto as Composite Exhibit "A." The documents include copies of the Note with any required indorsements, Recorded Mortgage, Assignment(s) of Mortgage, and any other applicable documentation supporting the right to seek a lift of the automatic stay and foreclose, if necessary.

3. Ocwen Loan Servicing, LLC services the underlying mortgage loan and note for the property referenced in this Motion for DEUTSCHE BANK NATIONAL TRUST COMPANY as Trustee for INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR11, MORTGAGE PASS-THROUGH CERTIFICATES Series 2006-AR11 (hereinafter, "noteholder") and is entitled to proceed accordingly. Should the Automatic Stay be lifted and/or set aside by Order of this Court or if this case is dismissed or if the Debtor obtains a discharge and a foreclosure action is commenced or recommenced, said foreclosure action will be conducted in the name of the noteholder. The noteholder has the right to foreclose because noteholder is the original mortgagee or beneficiary or assignee of the security instrument for the referenced loan. Noteholder directly or through an agent has possession of the promissory note and the promissory note is either made payable to noteholder or has been duly endorsed.

4. Co-Debtor, Joanne D. Raimo is liable on and/or has secured the aforementioned debt with the Debtor.

5. The mortgage provides Secured Creditor a lien on the real property located at 31 Linden Place, Malverne, New York 11565, in Nassau County, New York and legally described as stated in the mortgage attached in Composite Exhibit "A."

6. The terms of the aforementioned Note and Mortgage have been in default, and remain in default since August 1, 2018, in the amount of \$24,373.56. A true and accurate copy of Secured Creditor's affidavit in support and statement in regard to indebtedness and default are attached hereto as Exhibit "B." As per the Secured Creditor's statement the total amount due is \$815,449.15, as of January 18, 2019.

7. The stated value of the property is \$508,000.00. See Exhibit "C" which is attached hereto and permissible as a property valuation under Fed. R. Evid. 803(8).

8. Based upon the Debtor's Third Amended Chapter 13 Plan (Docket No. 42), the subject property is being surrendered.

9. Secured Creditor's security interest in the subject property is being significantly jeopardized by Debtor and Co-Debtor's failure to comply with the terms of the subject loan documents while Secured Creditor is prohibited from pursuing lawful remedies to protect such interest. Secured Creditor has no protection against the erosion of its collateral position and no other form of adequate protection is provided.

10. If Secured Creditor is not permitted to enforce its security interest in the collateral or be provided with adequate protection, it will suffer irreparable injury, loss, and damage.

11. Secured Creditor respectfully requests the Court grant it relief from the Automatic Stay in this case pursuant to §362(d)(1) of the Bankruptcy Code, for cause, namely the lack of adequate protection to Secured Creditor for its interest in the above stated collateral. The value of the collateral is insufficient in and of itself to provide adequate protection which the Bankruptcy Code requires to be provided to the Secured Creditor. Secured Creditor additionally seeks relief from the Automatic Stay pursuant to §362(d)(2) of the Bankruptcy Code, as the collateral is unnecessary to an effective reorganization of the Debtor's assets.

12. As stated above, there exists a non-filing Co-Debtor, Joanne D. Raimo, is liable on and has secured the aforementioned debt with the Debtor on the underlying obligation to the Secured Creditor. Pursuant to 11 U.S.C. §1301(c), the Secured Creditor hereby respectfully request relief from the co-debtor stay as expressed in 11 U.S.C. §1301(a) to the extent it applies to the Co-Debtors. In support of said request, it is respectfully submitted that the Co-Debtors received consideration for the claim held by the Secured Creditor as least in the form of money loaned by the Secured Creditor. There is a default in the post-petition payments in the amount \$24,373.56. Furthermore, it is respectfully submitted that the continuation of the stay as it pertains to the Co-Debtor would irreparably harm Secured Creditor in the absence of post-petition payments.

13. Once the stay is terminated, the Debtor and Co-Debtor will have minimal motivation to insure, preserve, or protect the collateral; therefore, Secured Creditor requests that the Court waive the 14-day stay period imposed by Fed.R.Bankr.P. 4001(a)(3).

14. The Trustee shall be notified of any surplus monies realized upon sale of the property in a foreclosure proceeding brought by Secured Creditor.

15. No previous application has been made for the relief request herein.

WHEREFORE, Secured Creditor, prays this Honorable Court enter an order modifying the automatic stay under 11 U.S.C. §§ 362(d)(1), (d)(2), and 11 U.S.C. §1301, to permit Secured Creditor to take any and all steps necessary to exercise any and all rights it may have in the collateral described herein, to gain possession of said collateral, to waive the 14-day stay imposed by Fed.R.Bankr.P. 4001(a)(3), and for any such further relief as this Honorable Court deems just

and appropriate.

Dated: February 11, 2019
Westbury, NY

RAS BORISKIN, LLC
Attorney for Secured Creditor
900 Merchants Concourse, Suite 310
Westbury, NY 11590
Phone: (516) 280-7675
Fax: (516) 280-7674

By: /s/ Kevin R. Toole
Kevin R. Toole, Esq.
Email: KTOOLE@RASCRAANE.COM